

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

VINCENT FLOYD RUSSO,

Defendant and Appellant.

G056681

(Super. Ct. No. C-49796)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Kazuharu Makino, Judge. (Retired judge of the Orange Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

William P. Melcher, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

\*

\*

\*

Appellant Vincent Floyd Russo was convicted of two counts of second degree burglary and one count of receiving stolen property in 1983. In 2014, he pled guilty to rape and assault by means of force likely to produce great bodily harm. He admitted one of the burglary convictions suffered in 1983 as a prior conviction enhancing his sentence.

In May of 2018, he filed an application to have his felony burglary convictions reduced to misdemeanors pursuant to Penal Code section 1170.18 subdivision (f), a motion for what is generally referred to as Proposition 47 relief. The trial court denied the motion and Russo appealed.

We appointed counsel to represent him on that appeal. Counsel filed a brief which set forth the procedural facts of the case (the facts of the crimes themselves are largely irrelevant because the argument is solely directed at Russo's plea and the application to it of Pen. Code, § 1170.18). Counsel did not argue against his client, but advised us there were no issues to argue on his behalf. Russo was invited to express his own objections to the proceedings against him, but did not. Under the law, this put the onus on us to review the record and see if *we* could find any issues that might result in some kind of amelioration of Curtis' lot. (*People v. Wende* (1979) 25 Cal.3d 436.) It should be emphasized that our search was not for issues upon which Curtis *would* prevail, but only issues upon which he *might possibly* prevail.

We have examined the record and found no arguable issue. Russo sought to have burglary convictions reduced to misdemeanors. His request was denied on the ground he had suffered an intervening felony conviction of a type that made him ineligible for such relief. Between the burglary convictions and this request, he pled guilty to rape and assault by means of force likely to produce great bodily harm. Penal Code section 1170.18, subdivision (i) explicitly exempts from its application, "a person who has one or more prior convictions for an offense . . . requiring registration pursuant to subdivision (c) of [Penal Code] Section 290." Penal Code section 290 is the sex

offender registration statute, and its registration requirement applies to appellant as a convicted rapist.

The trial court's ruling that Proposition 47 relief was unavailable to appellant appears to us – as it did to appellate counsel – unassailable. Proposition 47 simply does not allow relief to him because of his felony conviction for rape, which requires registration under Penal Code section 290.

We have considered the previously unsuccessful constitutional challenges to Penal Code section 1170.18 appellate counsel suggests to us and find them equally unavailing. And since Penal Code section 1170.18 relief was the only thing appellant sought, counsel's decision to file a *Wende* brief was correct.

The order is affirmed.

BEDSWORTH, ACTING P. J.

WE CONCUR:

IKOLA, J.

THOMPSON, J.